

Proposition 2 ½ - Part I

A Practical Guide

Proposition 2 ½ impacts every aspect of municipal governance and operations, but is difficult to understand and explain. In this two-part eUpdate, our goal is to summarize the important aspects of the law that arise during budgeting, and then provide practical guidance that can be utilized in preparing for an annual or special town meeting at which an override or exclusion will be presented. Here, we review key definitions, the two-step process required to increase taxes in excess of the amount allowed under Proposition 2 ½, the form of related town meeting articles and appropriation orders, the different functions and form of Proposition 2 ½ questions, and the process for placing a Proposition 2 ½ question on the ballot. In Part II, we will review the complexities of contingent appropriations and Proposition 2 ½ ballot questions.

1. Levy Ceiling and Levy Limit

In short, Proposition 2 ½, adopted pursuant to statewide initiative petition in 1981, establishes two types of limits on the amount that a municipality may raise by taxation. The first is the total amount that may be raised by taxation, known as the “levy ceiling”, the full and fair cash value of all property in the municipality, multiplied by two and one half percent. The second is the amount that a municipality may increase taxes from year to year, and that amount is known as the “levy limit”. In the most general of terms the levy limit is the amount a municipality could have raised by taxation the year before; plus, two and a half percent of that amount (hence the moniker “Proposition 2½”); plus “new growth” (an amount equivalent to increased value of properties based upon new development and of properties returning to the tax rolls).

Municipalities are not required to tax up to the levy limit (or the levy ceiling). Further, be reminded that the automatic 2 ½ percent increase each year is made with reference to the levy limit, and not the amount actually levied the prior year, and therefore, taxes can, at least in theory, increase more than 2 ½ percent each year.

2. Two Steps Required to Increase Taxes in Excess of Limits Imposed by Proposition 2½

If a municipality wants to raise taxes by amounts in excess of the levy limit, or wishes to ensure that it may do so in the future, it may pursue a Proposition 2 ½ override, debt exclusion or capital outlay exclusion. Two separate steps are required: (1) town meeting or city council must appropriate funds and (2) voters of the city or town must approve a ballot question. Either step may be taken first. Typically policy or timing issues dictate which order is preferable. In towns only, if the required election will occur after the town meeting, the appropriation may (but need not) be made contingent upon passage of a Proposition 2 ½ ballot question.

3. Form of Town Meeting Article or Appropriation Order

The statute does not dictate the form of article and motion or appropriation order to be used at town meeting or by the city council. Therefore, such format is in large part dependent on local practice (and, if a borrowing, on bond counsel’s requirements). The motion or order must identify the purpose, amount and funding source for

the appropriation. In towns, if it is intended that the appropriation be made contingent upon passage of a Proposition 2 ½ ballot question, the contingency may be included in the article, but must appear in the motion. The Department of Revenue has previously indicated that a motion that adds a contingency where one did not appear in the warrant article, or that omits a contingency that did appear in the article, is “within the scope” of the article. Therefore, whether to reference the contingency in the warrant article is a policy decision.

4. Form of Override, Debt Exclusion or Capital Outlay Exclusion Question

State election law dictates the form of the Proposition 2 ½ ballot questions, leaving a portion to be completed in each question with the purpose for the appropriation, and in the case of an override or capital exclusion override, a dollar amount. The purpose must be “substantially similar” to the purpose for which the monies were (or will be) appropriated. Moreover, to avoid running afoul of the Campaign Finance Law, G.L. c.55, the description inserted in the question must be a funding purpose (i.e., “a fire truck”), and not “advocacy” for the funding purpose (i.e., “because a new truck will save many lives”). The law does not authorize a summary to be included on the ballot in connection with any such ballot question.

Override – A levy limit override is a permanent increase in the amount allowed to be raised by taxation, typically used to address recurring operational expenses, such as higher assessments from a regional school district, increased staffing demands, additional services to be provided (i.e., providing full day kindergarten, 24-hour shift coverage, or operating a new building), and the like. In the first fiscal year, the additional room in the levy must be used for the purpose set forth in the ballot question. In later fiscal years, the “override” amount is not restricted, and is instead available for any legal purpose for which the funds may be appropriated. The ballot question for an override (G.L. c.59, §21C(g)) takes the following form:

Shall the (city/town) of _____ be allowed to assess an additional \$_____ in real estate and personal property taxes for the purposes of (*state the purpose(s) for which the monies from this assessment will be used*) for the fiscal year beginning July first, 20__?

Debt Exclusion – A debt exclusion is a temporary increase in the amount allowed to be raised by taxation for the period required to pay the principal and interest on an authorized borrowing. The exclusion only applies for the life of the borrowing - when the borrowing is paid off, the temporary exclusion terminates. A debt exclusion is frequently used as a way to finance significant projects such as the construction of a building or infrastructure project, or to purchase of significant equipment such as a fire truck. The ballot question for a debt exclusion (G.L. c.59, §21C(k)) takes the following form:

Shall the (city/town) of _____ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (*state the purpose or purposes for which the monies from the local issue will be used*)?

Questions are often raised as to why the ballot question does not provide for inclusion of a dollar amount. While a definitive answer cannot be provided, one likely reason is that the amount required to repay a borrowing will be dependent on various factors including the interest rate, length of the borrowing, and whether bond premiums will be applied to reduce the total project costs.

Also, be aware that there is no statutory requirement that a debt exclusion be authorized contemporaneously with the town meeting or city council vote to authorize the borrowing. For that reason, if a board of selectmen or

city council determine at any time after the appropriation vote, even years later, that it would be appropriate to “make more room in the levy” they may vote to place a debt exclusion question on the ballot.

Capital Outlay Exclusion – A capital outlay exclusion is a one-year only increase in the amount to be raised by taxation to pay for a particular item for which a municipality could borrow. Often, a capital exclusion is sought for the purchase of a piece of relatively expensive equipment such as a vehicle, acquisition of a piece of real property, or limited project. The ballot question for a capital exclusion (G.L. c.59, §21C(i)) takes the following form, which form is identical to the form of an override question:

Shall the (city/town) of _____ be allowed to assess an additional \$_____ in real estate and personal property taxes for the purposes of *(state the purpose(s) for which the monies from this assessment will be used)* for the fiscal year beginning July first, 20__?

5. Placement of a Proposition 2½ Question on the Ballot

Authority of “Local Appropriating Authority” - Proposition 2½ specifically provides that the “local appropriating authority” is responsible for placing debt exclusion, override, capital outlay and underride questions on the ballot. The “local appropriating authority” is defined by G.L. c.59, §21C as the board of selectmen, city council with approval of the mayor, or town council. Thus, whether to place a Proposition 2 ½ question on the ballot, and the form of such question (provided that the form complies with state law) is a matter solely within the jurisdiction of the local appropriating authority. This discretion extends to whether to: place a question on the ballot at all, even if a contingent appropriation has been voted by town meeting; place one question on the ballot for multiple purposes even if voted separately at town meeting; or to put multiple questions on the ballot, even if voted together at town meeting.

Note that in municipalities with an initiative petition process, such as are often found in city charters, that process may be used to require the city council to place an underride question on the ballot. In contrast, if no such initiative petition process exists in a charter or special act, an underride may only appear on the ballot if so voted by the “local appropriating authority”.

Quantum of Vote - For a debt exclusion or a capital outlay exclusion, the local appropriating authority must approve placement on the ballot by a 2/3 vote. For an override or underride question, only a majority vote is required.

Timing of Vote and Notice to Clerk - General Laws c.54, §42C requires that a vote to place a question on the ballot, and notice to the clerk of that vote, occur no later than 35 days prior the date of the election at which the question will appear. Further, pursuant to G.L. c.54, §64, the vote and notice must include the full text of the question.

If you have any questions about Proposition 2½, please contact Attorneys Lauren F. Goldberg or (lgoldberg@k-paw.com) or Mark R. Reich (mreich@k-plaw.com) at 617.556.0007.

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